

**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

FILED

05/16/22

10:50 AM

A1305017

May 16, 2022

Agenda ID #20634
Ratesetting**TO PARTIES OF RECORD IN APPLICATION 13-05-017:**

This is the proposed decision of Administrative Law Judge Robert Mason. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's June 23, 2022 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties to the proceeding may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure. Electronic copies of comments should also be sent to the Intervenor Compensation Program at **Icompcoordinator@cpuc.ca.gov**.

/s/ ANNE E. SIMON

Anne E. Simon

Chief Administrative Law Judge

AES:sgu

Attachment

Decision **PROPOSED DECISION OF ALJ MASON** (Mailed 5/16/2022)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of
California-American Water Company (U210W)
for an Order (1) Approving a Settlement
Agreement with the County of Monterey and the
Monterey County Water Resources Agency to
Settle and Resolve Claims and Issues Between the
Parties and to Promote the Development,
Construction and Operation of a Water Supply
Project for Monterey County on an Expedited
Basis, and (2) Authorizing the Transfer of
Authorized Costs Related to the Settlement
Agreement to Its Special Request 1 Surcharge
Balancing Account.

Application 13-05-017

**DECISION DENYING INTERVENOR COMPENSATION
CLAIM OF PUBLIC TRUST ALLIANCE**

Intervenor: Public Trust Alliance	For contribution to Decision (D.) 19-09-005 on a similar conceptual basis to that awarded to Water Plus because our substantial contributions were very similar in nature.
Claimed: \$121,500.00	Awarded: \$0.00
Assigned Commissioner: Alice Reynolds¹	Assigned ALJ: Robert Mason III

PART I: PROCEDURAL ISSUES

A. Brief description of Decision:	D. 19-09-005 restates, based on “previously authorized” grounds, the Commission’s updated treatment of confidentiality of information submitted with an application and finds settling parties’ conduct (which other parties had
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¹ This proceeding was re-assigned to President Alice Reynolds on May 5, 2022.

	identified as an inappropriate effort to conceal public information) as consistent with the new policy. The Decision followed a long abeyance after remand for reconsideration from the California Supreme Court. The ultimate approval of the partial settlement reached in the separate San Francisco Superior Court action involved transfers of ratepayer's funds to balancing accounts resolving remaining conflicts between California-American Water Co. and Monterey County and its Water Resources Agency resulting from the failed Regional Project phase of the "Coastal Water Project" and repeated the remanded Decisions.
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B. Intervenor must satisfy intervenor compensation requirements set forth in Pub. Util. Code §§ 1801-1812²:

	Intervenor	CPUC Verification
Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):		
1. Date of Prehearing Conference:	July 9, 2013	Verified
2. Other specified date for NOI:		
3. Date NOI filed:	August 8, 2013	Verified
4. Was the NOI timely filed?		Yes
Showing of eligible customer status (§ 1802(b) or eligible local government entity status (§§ 1802(d), 1802.4)):		
5. Based on ALJ ruling issued in proceeding number:	A. 13-05-017	See Discussion in Part I.C 5.
6. Date of ALJ ruling:	September 13, 2013	See Discussion in Part I.C 5.
7. Based on another CPUC determination (specify):		
8. Has the Intervenor demonstrated customer status or eligible government entity status?		No.
Showing of "significant financial hardship" (§1802(h) or §1803.1(b)):		
9. Based on ALJ ruling issued in proceeding number:		See Discussion in Part I.C 5.

² All statutory references are to California Public Utilities Code unless indicated otherwise.

10. Date of ALJ ruling:		
11. Based on another CPUC determination (specify):		See Discussion in Part I.C 5.
12. Has the Intervenor demonstrated significant financial hardship?		No
Timely request for compensation (§ 1804©):		
13. Identify Final Decision:	D. 19-09-005	Verified
14. Date of issuance of Final Order or Decision:	September 19, 2019	September 19, 2019
15. File date of compensation request:	November 18, 2019	November 22, 2019
16. Was the request for compensation timely?		No. See Discussion in Part I.C 5.

C. Additional Comments on Part I: (use line reference # as appropriate)

#	Intervenor's Comment(s)	CPUC Discussion
1	<p>Decision created uncertainties rather than resolving how Commission process should be applied to a partial settlement reached outside of standard Commission procedure. The approved "settlement" was truly complex as it involved a cash payment and non-enforcement of a County Ordinance. Associated non-financial aspects of the settlement were impossible to evaluate. Procedural uncertainty was <u>created</u> regarding the public trust doctrine because the trust was never explicitly mentioned in the Decision while it was inherent in discussion of a project structurally requiring constructive alienation of the trust.</p> <p>In addition, the misleading posturing after remand attempting to portray the "Applicant" as somehow the "responsive" party with the public threatening to intrude on its "rights" created an accounting nightmare for us as we tried to make procedural responses to defend otherwise unprotected public interests and our</p>	<p>No comment. It is unclear how this discussion relates to intervenor compensation filing dates and deadlines.</p>

	<p>environment. The repeated and often long abeyances as this proceeding remained “open” while other “segments” of the matter were considered “open” for some purposes while “decided” for others kept us in a perpetual “learning” posture as we experimented with alternative procedural mechanisms to assist the Commission and parties move forward in a reasonable manner.</p> <p>We found it very difficult to prioritize tasks and reasonably allocate resources during the periods before we actually understood the structural nature of our position and the most relevant advocacy frameworks (only apparent to us for the first time during preparation of this request). We are now “rushing” to prepare a legally sufficient response and file it in time to comply with “local” requirements against a background of an ongoing social / ecological “crisis.”</p>	
2	<p>Date key to procedural “irregularities:” eg. deadline for responses to the December 2012 “settlement” had expired before the item was first noticed on any Commission Agenda. Most lay participants in the proceeding had no notice of “stressed” procedural conditions or potential implications.</p>	<p>No comment. It is unclear how this discussion relates to intervenor compensation filing dates and deadlines.</p>
3	<p>Although Public Trust Alliance had at times been represented by competent counsel, this was not the case during the start of this proceeding. We were reluctant to get involved in a “new” proceeding at a time when “settlement” negotiations were being conducted among a more comprehensive selection of parties in</p>	<p>No comment. It is unclear how this discussion relates to intervenor compensation filing dates and deadlines.</p>

	<p>an overlapping matter (A. 12-04-019). We concluded we HAD to be involved here because we didn't know how some parties might be intending to use procedures or results in this very ambiguous proceeding where trust interests were in danger of being inappropriately surrendered by mere implication.</p>	
4	<p>Not clear whether unmodified "Decision" <u>can</u> stand as "final" or whether underlying assumptions and subsequent treatment rendered A. 13-05-017 moot well before "final" Decision. This point goes directly to establishing limits on ambitious lawyers "making law" at the State administrative level (this time in the midst of a National Constitutional Crisis where numerous previously understood legal boundaries have been simultaneously blurred by deliberate Executive action). The particular blurring mechanisms exercised here as in <i>limine</i> rulings were appealed to higher authority have served to create confusion at many levels. This complex technical conflation of authorities should be a Commission concern, but not one worth wasting one further moment on litigation when key public interests are not adequately represented.</p>	<p>Per Commission rules, D. 19-09-005 closed the proceeding and serves as the final decision in this proceeding.</p>
5		<p>Based on multiple Administrative Law Judge rulings in in A.15-07-019 (dated 08/09/16, 02/21/17, 09/07/17, and 09/27/17) and the Commission's order in D.19-06-013, Public Trust Alliance has failed to adequately show eligible customer status and has not shown significant financial hardship, as required by Pub. Util. Code §§ 1801-1812.</p> <p>Additionally, the claim was not timely filed. The Decision mailing date was September 19, 2019. The instant claim was not formally filed until November 22, 2019. Commission Rule of</p>

		<p>Practice and Procedure 17.3 requires intervenor compensation claims to be filed within 60 days after the decision is issued.</p> <p>Public Trust Alliance's intervenor compensation claim in support of A.13-05-017 and D.19-09-005 hereby is denied.</p>
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PART II: SUBSTANTIAL CONTRIBUTION

- A. Did the Intervenor substantially contribute to the final decision (see § 1802(j), § 1803(a), 1803.1(a) and D.98-04-059): (For each contribution, support with specific reference to the record.)**

Intervenor's Claimed Contribution(s)	Specific References to Intervenor's Claimed Contribution(s)	CPUC Discussion
Settlement Agreement	Examples from PTA filings keyed to specific ordering paragraphs of D.19-09-005	Unverified. Claim and timesheets do not provide sufficient information to check claimed contributions.
Motion to Seal	Examples from PTA filings keyed to specific ordering paragraphs of D.19-09-005	Unverified. Claim and timesheets do not provide sufficient information to check claimed contributions.
Recovery of expenses from Ratepayers	Examples from PTA filings keyed to specific ordering paragraphs of D.19-09-005	Unverified. Claim and timesheets do not provide sufficient information to check claimed contributions.

B. Duplication of Effort (§ 1801.3(f) and § 1802.5):

	Intervenor's Assertion	CPUC Discussion
a. Was the Public Advocate's Office of the Public Utilities Commission (Cal Advocates) a party to the proceeding?³	Yes	Verified
b. Were there other parties to the proceeding with positions similar to yours?	Yes	Verified
c. If so, provide name of other parties: Marina Coast Water Agency, Water Plus, Public Water Now (formerly Citizens for Public Water)		Verified
d. Intervenor's claim of non-duplication: We tried to complement or supplement contributions by organizations with more suitable expertise and attempted at all times to present unconflicted testimony and evidence, particularly concerning California Public Values protected by the State's Public Trust Doctrine. Often we were the only party doing so.		Unverified

C. Additional Comments on Part II:

#	Intervenor's Comment	CPUC Discussion
1	Category reflects "work in progress" because we have limited capacity to seek "Public Advice" from CPUC divisions and departments assisting intervenors. Conceptual approach selected because it is consistent with procedure which evidently "worked" with respect to the substantial contribution recognized for Water Plus in this matter.	Unverified. Claim and timesheets do not provide sufficient information to check claimed contributions.
2	Category reflects "work in progress" because we have limited capacity to seek "Public	Unverified. Claim and timesheets do not provide sufficient information to check claimed contributions.

³ The Office of Ratepayer Advocates was renamed the Public Advocate's Office of the Public Utilities Commission pursuant to Senate Bill No. 854, which the Governor approved on June 27, 2018.

	Advice” from CPUC divisions and departments assisting intervenors. Conceptual approach selected because it is consistent with procedure which evidently “worked” with respect to the substantial contribution recognized for Water Plus in this matter.	
3	Category reflects “work in progress” because we have limited capacity to seek “Public Advice” from CPUC divisions and departments assisting intervenors. Conceptual approach selected because it is consistent with procedure which evidently “worked” with respect to the substantial contribution recognized for Water Plus in this matter.	Unverified. Claim and timesheets do not provide sufficient information to check claimed contributions.
B(b)	Yes, but <u>no</u> others representing public trust concerns while Public Advocate was impliedly settling out of the area (if it ever “existed” for them at all given apparent ALJ Division policy and regulated utility wishes not to acknowledge this historic Constitutional aspect of water governance in California). For the first Several years of this and other MPWSP proceedings, public interests such as those more recently represented by the City of Marina, Citizens for Just Water and CURE, were simply excluded from the conversation. It also seemed to us that California trust assets were not being adequately distinguished from “environmental” interests, and were thus impliedly considered “alienable” if certain “environmental” organizations	Unverified. Claim and timesheets do not provide sufficient information to check claimed contributions.

	indicated approval of the transactional approach..	
B (d)	Public Trust Alliance was the only party explicitly noting public trust interests, and, along the lines of Water Plus’s essential contributions regarding tax consequences and competitive positioning of alternative projects, our concentration has been supplementing the usual flow of advice to the Commission to add Trust concerns. We placed particular emphasis on urging the Commission not to be complicit in allowing Trust Assets to be surrendered by mere implication.	Unverified. Claim and timesheets do not provide sufficient information to check claimed contributions.

PART III: REASONABLENESS OF REQUESTED COMPENSATION

A. General Claim of Reasonableness (§ 1801 and § 1806):

	CPUC Discussion
<p>Intervenor’s claim of cost reasonableness: The CPUC is not a court of law and rules of evidence need not be applied. It is, however, a public decision making forum where Constitutional limits and general principles of law (<u>as broadly understood by the public</u>) must be universally observed. While the CPUC espouses the aspirational value that all Californians should be able to meaningfully participate in public decision making, legal professionals have dominated the structure of narrative input to the Commission. This has generated a generally adversary and exclusive atmosphere which often has to be balanced against the inclusive and collaborative aspirational Commission goals of protecting shared public interests.</p> <p>Although Public Trust Alliance has been represented by competent counsel (4 different California Bar Members engaged at various times during this and associated MPWSP proceedings up to and including 2 amicus filings in support of Marina Coast positions in this very matter of confidentiality and “Reasonable Use of the Waters of California” before the California Supreme Court), no claim is made for those services, but reasonable compensation is sought for Expert 1, Michael Warburton, who has 30+ years of advocacy experience in science, law, and economics, including the last 11 years working with other active parties in 3 MPWSP proceedings before the CPUC, most frequently the only advocate for threatened California Public Trust concerns. He was compensated on a reasonable</p>	<p>Unverified. Claim and timesheets do not provide sufficient information to check claimed reasonableness.</p>

<p>basis for the first 3 years of advocacy in this matter resulting in CPUC approval of a very different project with public ownership of a proposed desalination enterprise (the Regional Project approved in D. 10-12-016). While MPWSP proponents have seemingly gained tacit approval from the CPUC to proceed as if there was no California Trust in subsequent years, other State institutions have strengthened the Trust and treated it as a tangible aspect of Constitutional water governance in this State. We see the Public Trust Doctrine as a key adaptive tool in formulating reasonable and effective responses to changing circumstances.</p> <p>Physical and Legal circumstances have changed dramatically during the pendency of this Application, and as a California Agency, the CPUC has Constitutional obligations pursuant to the State's Public Trust Doctrine to provide continuing supervision and adjust its policies to protect Trust assets whenever feasible. Well organized community groups have emerged to advocate expansion of the proposed M1Water recycling plant instead of the environmentally harmful MPWSP. This is exactly the direction we have been suggesting for the last 11 years, relying on eventual compensation from the Intervenor Compensation program which was statutorily established to help protect the California Public from the threat of regulatory capture (the broadly understood phenomena where private interests inappropriately dominate the affordable provision of public services in a manner consistent with long understood public interests). The unreasonable MPWSP has come very close indeed to being mistakenly implemented due to an inappropriately exclusive legal approach at the CPUC which must share water governance jurisdiction with several other California Agencies with independent DeNovo review powers. We have contributed substantial interdisciplinary advocacy skills as an intervenor to assist the Commission and its regulated utilities forge a viable path forward in providing adequate public services at affordable rates in a manner consistent with long-established public interests, all during an ongoing international Constitutional Crisis which has repeatedly, often in an implicit manner, served to reshape the character of public administrative actions ("Constitutional Crisis" used as a proxy for the recent rise of fascism in world, national, and local level politics).</p>	
<p>Reasonableness of hours claimed: In this constituent proceeding of an "action" in seemingly perpetual "progress," we now submit what we feel is a "workable" contribution to "Reclaiming Public Trust" in this matter. In this case, after Supreme Court remand of a complex decision, and a long abeyance, a situation has developed where project proponents seem to want to misleadingly redefine the public as the "moving" party and themselves as somehow the "reactive" ones. From this manipulated posture, their "due process" assertions might be more credible, but we all must recognize that it simultaneously becomes more confusing and less believable when their actual position is that of an "Applicant" for concessions before the CPUC. It is in fact <u>their</u> burden to make a reasonable proposal and ensure that their</p>	<p>Unverified. Claim and timesheets do not provide sufficient detail to check claimed reasonableness.</p>

<p>advocates have made a “reasonable investigation” of the nature of claims being made. This is the essence of the public trust as protected by the California Public Trust Doctrine.</p> <p>We have attempted to present our claim in a reasonable manner while simultaneously trying to comply with administrative regulations and have found it impossible to do so because of our limited institutional capacity. And we are only realizing this very late in the proceeding.</p> <p>We are in a position somewhat akin to the popularly recognized nurse in a hospital where the local legal team has decided that medical liability issues can be “solved” by requiring “better” record keeping on the nursing floor (possibly because their labor pool is not unionized...). Instead of the basic “patient asleep” notation, the nurse is ordered to write: “the percipient indications which suggest the appearance that the patient might be asleep are” followed by a comprehensive list of observations, while all symptoms of “expensive” conditions are explicitly excepted. While the new record keeping standards might make sense to the hospital legal team, they also can be easily seen to make the provision of skilled nursing services impossible. We find ourselves in a situation where public interests might be excluded from meaningful participation in an analogous manner. Not only have we submitted a finite claim, its size is eminently reasonable given the issues involved.</p> <p>The limited capacities of non-profit advocacy organizations can never match the document production capacities of computer-aided legal shops with access to the latest software. But our participation is essential in making sure that regulated utilities are required to meet their legal burdens and not merely capture public regulators with financial or political resources. We are waiving significant legitimate “claims” in order to comply with minimal standards and pray that this material is “sufficient.”</p>	
<p>c. Allocation of hours by issue: Settlement Agreement: approx. 40% Motion to Seal: approx. 50% Payment of Ratepayer Funds: approx. 10%</p>	Unverified

B. Specific Claim:*

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate \$	Total \$
Michael Warburton	2013	120	300	2011 table rate	\$36,000	0 [A]		\$0.00

Michael Warburton	2014	60			\$18,000	0 [A]		\$0.00
Michael Warburton	2015	75			\$22,500	0 [A]		\$0.00
Michael Warburton	2016	20			\$6,000	0 [A]		\$0.00
Michael Warburton	2017	30			\$9,000	0 [A]		\$0.00
Michael Warburton	2018	40			\$12,000	0 [A]		\$0.00
Michael Warburton	2019	60			\$18,000	0 [A]		\$0.00
Subtotal: \$121,500						Subtotal: \$0.00 [A]		
TOTAL REQUEST: \$123,500						TOTAL AWARD: \$0.00		
<p>*We remind all intervenors that Commission staff may audit the records and books of the intervenors to the extent necessary to verify the basis for the award (§1804(d)). Intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Intervenor’s records should identify specific issues for which it seeks compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees paid to consultants and any other costs for which compensation was claimed. The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision making the award.</p> <p>**Travel and Reasonable Claim preparation time are typically compensated at ½ of preparer’s normal hourly rate</p>								

C. Attachments Documenting Specific Claim and Comments on Part III:
(Intervenor completes; attachments not attached to final Decision)

Attachment or Comment #	Description/Comment
1	Certificate of Service
2	Timesheet / Best effort with work in progress
3	Required Biographical Material (on file with other CPUC Proceedings)
4	Organizational Documentation for Eligibility for Intervenor Compensation (presumed to be on file with CPUC)

D. CPUC Comments, Disallowances, and Adjustments

Item	Reason
[A]	As discussed above, this claim must be denied for multiple reasons. It was not filed timely, the organization has failed to show eligible customer status and significant financial hardship, and the claim is lacking in documentation.

PART IV: OPPOSITIONS AND COMMENTS

Within 30 days after service of this Claim, Commission Staff or any other party may file a response to the Claim (*see* § 1804(c))

A. Opposition: Did any party oppose the Claim?	Yes
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Party	Reason for Opposition	CPUC Discussion
California American Water Company	California American Water Company (Cal-Am) states that Public Trust Alliance is not eligible for intervenor compensation and did not make a substantial contribution to D. 19-09-005, and the claimed costs are not reasonable.	Cal-Am's opposition provides support for our findings above.

B. Comment Period: Was the 30-day comment period waived (<i>see</i> Rule 14.6(c)(6))?	No
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Party	Comment	CPUC Discussion

FINDINGS OF FACT

1. Public Trust Alliance has not made a substantial contribution to D.19-09-005.
2. The claimed costs and expenses are not properly documented.
3. The total of reasonable compensation is \$0.00.
4. D.19-09-005 was issued on September 19, 2019.

5. Public Trust Alliance filed the instant intervenor compensation claim on November 22, 2019, more than 60 days after D.19-09-005 was issued.

CONCLUSIONS OF LAW

1. The Claim was not timely filed.
2. The Claim fails to satisfy all requirements of Pub. Util. Code §§ 1801-1812.

ORDER

1. Public Trust Alliance is awarded \$0.00.
2. The comment period for today's decision is not waived.

This decision is effective today.

Dated _____, at San Francisco, California.

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:		Modifies Decision?	No
Contribution Decision(s):	D1909005		
Proceeding(s):	A1305017		
Author:	ALJ Mason		
Payer(s):	N/A		

Intervenor Information

Intervenor	Date Claim Filed	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Public Trust Alliance	11/22/19	\$123,500	\$0.00	N/A	Ineligible for intervenor compensation, lack of substantial contribution, claim not timely filed.

Hourly Fee Information

First Name	Last Name	Attorney, Expert, or Advocate	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Michael	Warburton	Public Trust Alliance	\$300	2013	N/A
Michael	Warburton	Public Trust Alliance	\$300	2014	N/A
Michael	Warburton	Public Trust Alliance	\$300	2015	N/A
Michael	Warburton	Public Trust Alliance	\$300	2016	N/A
Michael	Warburton	Public Trust Alliance	\$300	2017	N/A
Michael	Warburton	Public Trust Alliance	\$300	2018	N/A
Michael	Warburton	Public Trust Alliance	\$300	2019	N/A

(END OF APPENDIX)